IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 193 of 2000
Reserved on : 26-6-2007.

Date of Decision: 11. 07. 2007.

Chuhra Ram. Appellant.

Versus

State of H.P. Respondents.

Coram

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? No

For the appellant : Sh.R.K. Gautam, Senior Advocate, with Mr. Naveen Bhardwaj Advocate.

For respondent: Shri V. K. Verma., Additional Advocate General.

Surinder Singh, J . (oral)

The appellant has felt aggrieved and dis-satisfied by the impugned judgment of conviction in Sessions Trial No. 7-NL/7 of 1998 dated 29.4.2000 whereby he has been convicted under Section 376 of the Indian Penal Code and sentenced to under-go simple imprisonment for a period of seven years and to pay a fine of rupees 10,000/-, in default of payment of fine, the appellant was further ordered to under-go simple imprisonment for a period of one year, which has been assailed in this appeal.

The grounds laid in appeal by the appellant are that the trial Court did not appreciate the fact of litigation inter-se the parties which fact stood admitted even in the statement of the prosecutrix. further the testimony of the prosecutrix did not inspire confidence, the entire

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Whether reporters of the Local papers are allowed to see the judgment? . Yes.

evidence of the prosecution was full of contradictions and the delay in F.I.R. was not properly explained, the medical evidence did not conclude the factum of rape and also that the discrepancies which went to the route of the case were brushed aside without any cogent reasons, thus prayed for acceptance of the appeal.

I have heard Shri R.K. Gautam, Senior Advocate instructed by Shri Naveen Bhardwaj, Advocate for the appellant and Shri V.K. Verma, learned Additional Advocate General for the State.

Learned counsel for the appellant has taken me through the evidence on record and has forcefully argued that the statement of the prosecutrix is full of contradictions and did not inspire confidence and there is no material evidence to corroborate her story. He has further argued that, the prosecutrix and her husband had exhibited themselves to be more curious to obtain conviction of the appellant to square their old grudge. The appellant is innocent, he has been falsely roped in the present case with ulterior motive. Learned counsel has submitted that the delay in F.I.R. has given a time to them to frame the appellant after due deliberations. These factors were not appreciated by the learned trial Court .If the matter is re-examined in the right earnest; it may result into acquittal of the appellant.

Contra, Shri V.K. Verma, Additional Advocate General has supported the impugned judgment and urged that the learned trial Court has dealt with every aspect of the case in accordance with law. Therefore, it requires no interference.

I have given my thoughtful consideration to the rival contentions of the parties and have reappraised the evidence on record.

CASE OF THE PROSECUTION

The factual matrix of the case is that the prosecutrix is the wife of Ranjit Singh (PW4). It is alleged that on 26th September, 1987, at about

4.000 p.m, she had gone to her fields to cut the grass. When she was returning back at about 5.30 P.M, with a head load of grass, the appellant is alleged to have caught hold her from her back with the result, she fell down with her head-load. Thereafter, the appellant caught hold her from the breast. She raised hue and cry, he gagged her mouth and slapped her. Thereafter, she was pushed on the ground, string of her salwar was broken and the appellant took off and threw the salwar away and thereafter forcefully committed the rape and ran away towards village Nand. Thereafter, she put on her salwar, picked up the head load of the grass and reached her house around 6.00 P.M. The husband of the prosecutrix was not in the house. He returned around 7.00 P.M. and she informed him about the alleged incident. Immediately, thereafter he went to the house of the appellant and informed about the episode to his father Santa Ram in the presence of the appellant. The appellant proclaimed that he had enjoyed the prosecutrix and he may do whatever he liked . Ranjit Singh her husband returned back to his house and after some time went to the Pradhan Ram Asra (PW7) and informed him about the incident. The said Pradhan told him that he would call for the appellant in the morning and enquire about the allegations. Next day, i.e, on 27.9.1997, Pradhan Ram Asra along with Datta Ram Lamberdar visited the house of Ranjit Singh and the appellant was also called there. The matter was enquired from him. Again he proclaimed that he had enjoyed the prosecutrix and whatever they wanted to do, they are at liberty to do. On this, the Pradhan told the husband of the prosecutrix to report the matter to the Police. The prosecutrix lodged the report Exhibit PW1/A on the same day around 4.15 P.M. in Police Station, Ramshehar.

On the registration of the FIR aforesaid, police swung into motion. The prosecutrix was medically examined. The Doctor handed over the parcel of salwar to the Police which was sent for Forensic Science

Examination. The appellant was arrested. His underwear was taken into possession and sent for examination to the Forensic Science Laboratory. On receiving the report Exhibit PW12/A from the said laboratory, the Doctor gave the following opinion:

> **"<u>Final opinion</u>: According to the report from chemical analyst and all other findings, prosecutrix (name withheld) has undergone sexual intercourse without any struggle. In the past also she has undergone repeated sexual intercourse".**

The accused was also medically examined. **No injures were found** on his person. However, there was nothing to suggest that he was incapable of performing the sexual intercourse. His medical certificate is PW9/A. The police had visited the spot and the site plan Exhibit PW12/A was prepared. After recording the statements of witnesses under Section 161 of the Code of Criminal Procedure, challan was presented in the Court of Chief Judicial Magistrate for committal who committed it to the Court of Sessions.

Finding prima facie case under the aforesaid Section, the appellant was charge-sheeted by the Additional Sessions Judge to which the appellant pleaded not guilty and claimed trial.

In order to prove this case, the prosecution has examined Smt. Shakuntala Devi prosecutrix (PW1), Shri Datta Ram Namberdar (PW2), Ram Lal (PW3), Ranjit Singh (PW4), Dr. Shashi Sharma (PW5), Krishan Dayal (PW6), Ram Asra (PW7), Ram Singh (PW8), Dr. Sanjeev Kapur (PW9), Shri Dilbag Singh (PW10), Shri Devi Dass (PW11) and Shri Inderjit Head Constable (PW12).

The prosecution had given up Devi Singh and Bagga Ram having been won over by the appellant and also gave up Hari Saran being un-necessary.

The appellant was examined under Section 313 of the Code of Criminal Procedure and the circumstances which were found attendant upon him were put to him, to which he denied. According to him, witnesses have deposed against him on account of long standing enmity and he has been falsely involved in the case as there has been a dispute between the parties over a path and he is innocent.

Since it was not a case of acquittal straightway, therefore, the learned trial Court called upon the appellant to enter into defense as per the provisions of Section 232 of the Code of Criminal Procedure but no defense was led. Accordingly, the matter was heard and the learned trial Court convicted and sentenced the appellant, as stated above.

FINDINGS IN APPEAL

The question before me is whether the statement of the prosecutrix inspires confidence, in the light of the circumstances adduced on record? For this answer re-appreciation and close scrutiny of the evidence is required.

The prosecutrix during the trial before the court had tried to corroborate her version given in the FIR. **But it is admitted by her that a civil litigation was pending between the accused and her husband at the time of incident and that three days prior to this, a quarrel also took place between her husband and the appellant which was compromised in the local Panchayat. She further admitted that her brother and his associates had attacked the appellant and that matter was also compromised in the Panchayat**. Though later she had tried to disown this statement. **She had stated that injuries were caused on her head but no such injury was found by the doctor Shashi Sharma (PW5) who had initially examined her.** The prosecutrix has also given a contradictory version about the way alleged incident took place. Though she has identified her Salwar (EXP1) in the

court but neither has she stated that the said salwar was worn by her at the time of alleged incident nor there any other evidence to this effect. The story of throwing away of the salwar is missing in her statement in the court, which was initially set up in the FIR. She has blown hot and cold while explaining the manner in which the string of the trouser got broken. She was also confronted with her earlier statement Exhibit PW1/B and also with the FIR Exhibit PW1/A, to which she contradicted.

Ranjit Singh (PW4) husband of the prosecutrix had tried to corroborate her statement. According to him, when the prosecutrix had disclosed about the incident to him, thereafter he went to the house of Ram Lal (PW3) and Sucha (not examined). They told him to report the matter to the Pradhan and then he approached the Pradhan Shri Ram Asra (PW7) who told him to come next morning. Next day, Local Panchayat was convened in which Ram Lal, Sucha Ram, Bagga Ram, Data Ram, Pradhan Ram Asra and Bhag Singh were present. Accused was called and there he also alleged to have replied in the same manner as alleged by PW1 supra. In the cross-examination he was confronted with his earlier statement Exhibit PW4/ and he denied the material facts, like visiting the house of the appellant immediately when the prosecutrix had disclosed this fact to him in the presence of his father Sant Ram. He has specifically stated that he had narrated the whole story to Pradhan Ram Asra, whereas Ram Asra denied it. **However he has admitted that in between 26.9.1997 till the date of lodging the FIR, and her medical examination the prosecutrix remained in his company. Since she was not examined medically immediately after the incident, no importance can be attached to the medical doctor's opinion as extracted above.** The prosecutrix has not sustained any injury on her body whereas she has stated to have received on the head and there is no mention in her MLC. Further the Doctor (PW5) has stated

that the prosecutrix would sustain injuries if sexual intercourse is committed upon the stony place for half an hour as stated by the prosecutrix.

Datta Ram (PW2) and Ram Lal (PW3) who were present in the village Panchayat have stated in the examination in chief that the prosecutrix did not disclose anything about the rape as alleged in the Panchayat but in turn they have admitted long litigation inter se the parties. . Pradhan Ram Asra has denied having complained to him by the prosecutrix and her husband about the alleged rape but according to him they stated that the appellant had caused in jury to her .These witnesses were not declared hostile to the prosecution. All the witnesses aforesaid have unequivocally stated that the parties have old pending litigation. Thus, inimically disposed of.

The PWS 1 and 4 above have made two contradictory statements. Independent witnesses have not afforded any corroboration on material particulars. Therefore, in these circumstances, where the witnesses make two inconsistent statements in their evidence either at one stage or at two stages, it has been held in ***Suraj Mal –v- The State (Delhi Administration) AIR 1979 Supreme Court 1408*** that the testimony of the said witness becomes unreliable and unworthy of credence and in the absence of special circumstances no conviction can be based on the evidence of such witness(s).

Legally, the conviction of the accused can be based on the sole testimony of the prosecutrix provided it inspires confidence. It has been held in ***State of Punjab –v- Gurmit Singh, AIR 1996 Supreme Court 1393:***that the Corroboration , as a condition for judicial reliance on the testimony of the prosecutrix, is not a requirement of law but a guidance of prudence under the given circumstances **.**The testimony of a victim in cases of sexual offences is vital and unless there are compelling

reasons which necessitate looking for corroboration of her statement, the Courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict the accused where her testimony inspires confidence and is found to be reliable. The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge leveled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused.

In ***State of H.P.-v- Lekh Raj and another (2000) 1 Supreme Court Cases 247,*** the Supreme Court has discussed the evidentiary value of the prosecutrix and further held if and when corroboration of her statement is necessary. In ***State of H.P. –v- Shree Kant Shekari (2004) 8 Supreme Court Cases 153,*** it has been held that if on the facts and circumstances of the case, Court finds it difficult to accept the version of the victim on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. The same principal of law was reiterated by the Apex Court in ***State of H.P. –v- Asha Ram (2005) 13 Surpeme Court Cases 766.***

In nut shell, it is by now well settled principle of law that corroboration as a condition for placing reliance on the testimony of the victim is not the requirement of law but a guidance of prudence under the given circumstances. Minor contradictions or insignificant discrepancies in the statement of prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case.

CONCLUSION

In the light of the law discussed above it has been seen that in the given circumstances when the parties are inimically disposed of to each other and there have been assaults on the appellant by the husband of

complainant and her brother, though compromised in a local Panchayat, the contradictions and improvements in her statement and of her husband, the corroboration to the statement of the prosecutrix is required which is lacking. Thus it will not be safe to put implicit reliance on the statement of the prosecutrix in the given circumstances as she has to be dis-believed in material particulars. Further, it is elementary that where prosecution has a definite or positive case, it must prove the whole of the case but if the two views are deducible from the evidence on record, the benefit of the favourable view has to be given to the accused.

On the close scrutiny and for the foregoing reasons, I have found that the testimony of the prosecutrix in the instant case does not inspire confidence. Therefore, in my opinion, the judgment of conviction and sentence recorded by the trial court is un-sustainable.

In result the appeal is allowed. The judgment of conviction and sentence recorded by the trial court is hereby set aside and the appellant is acquitted of the offence charged against him.

The appellant is already on bail, he is discharged of his bail bonds entered upon by him in the trial court and also in this appeal. The matter stands accordingly disposed of.

(Surinder Singh)
Judge.

July 11 , 2007.
(bm)